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*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety*  
*Fire Safety Commission*  
*Automatic Sprinkler Appeals Board*

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MAURICE M. PILETTE  
CHAIRMAN

PAUL DONGA  
VICE CHAIR

**Docket # 2005-06**  
**68 Field Street**  
**Brockton, MA.**

**AUTOMATIC SPRINKLER APPEALS BOARD**  
**DECISION AND ORDER**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201., relative to a determination of the Brockton Fire Department, requiring the installation an adequate system of automatic sprinklers in a building owned and/or operated by Peter Asack (hereinafter referred to as the Appellant). The building, which is the subject of the order, is known as Max's Hideout, Inc. It is located at 68 Field Street, Brockton, MA.

**B) Procedural History**

By written notice dated 3-24-05, the Brockton Fire Department issued an Order of Compliance to the Appellant informing him of the provisions of a new law, M.G.L c. 148, s.26G1/2, that requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 68 Field Street Brockton, Massachusetts. The appellant filed an appeal of said order on 4-12-05. The Board held a hearing relative to this appeal on 5-18-05, at the Department of Fire Services, Stow, Massachusetts.

The Appellant, Peter Asack, appeared on his own behalf. Lt. Edward R. Williams appeared on behalf of the Brockton Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Edward G. McCann and Brian Gore, Chief Thomas Coulombe and Paul Donga. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the enforcement action of the Brockton Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

**D) Evidence Received**

1. Application for Appeal
2. Order of Notice
3. Appellant's memorandum
4. Notice of hearing to Appellant
5. Notice of hearing to Fire Department
6. Stipulations not in dispute
7. Occupancy permit
8. Certificate of Inspection
9. Photographs 9A, 9B
10. Floor plans 10A, 10B
11. Zoning Board of Appeals Decision

**E) Subsidiary Findings of Fact**

- 1) By Notice dated 3-24-05 the Brockton Fire Department issued an order to the Appellant requiring the installation of an adequate system of automatic sprinklers in his building located at 68 Field Street, Brockton in accordance with the provisions of M.G.L. c. 148, s.26G ½. Said notice contained the statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, which requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 2) The provisions of the 2d paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part, states: " every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers

in accordance with the state building code”. The law was effective as of November 15, 2004.

- 3) The subject building consists of 2 stories and is operated as a bar/restaurant. The establishment has been issued an entertainment license that allows for jukeboxes, dancing by patrons and live bands. The appellant agrees that the establishment is considered a bar, nightclub or dance hall under the provisions of M.G.L. c.148, s.26G1/2, but contends that statute is not applicable since the building’s capacity is limited.
- 4) The building has the ability to have an occupancy of 171 persons with tables and chairs calculated at 15 square feet per person. The property has the ability to have an occupancy of 369 persons, standing space only, calculated at 7 square feet per person. However, when the business was originally allowed to open, the City of Brockton Zoning Board of Appeals (ZBA) restricted the legal occupancy of the building to 96 persons. Subsequently, the ZBA allowed an increase of the legal capacity to 128 persons subject to the approval of the Brockton License Commission. However, the Brockton License Commission subsequently voted to maintain the capacity to 96 persons.
- 5) The City of Brockton’s Certificate of Inspection issued on 5-5-05 indicates that the legal capacity of the establishment is 96. Additionally, the current Occupancy Permit issued by the Building Department lists the capacity at 96 persons.

#### **F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The subject building is considered a “public assembly... designed as a nightclub, dancehall, discotheque, bar or for similar entertainment purposes...” for the purposes of M.G.L. c.148, s.26G1/2.
- 2) Although questions were raised about the legality of the 96 person capacity limit, based upon the testimony of the parties and the documents presented, including the City’s Certificate of Inspection, current Occupancy Permit, the decisions of the ZBA and the Brockton License Commission, the current capacity of the building is legally limited to 96 persons. The Appellant indicated that he has no intention of challenging the 96 person limit.
- 3) The enhanced sprinkler provisions of M.G.L. c.148, s.26G1/2 (among other considerations) applies to such public assemblies “...with a capacity of 100 persons or more...”. The legal capacity of the subject building is less than 100 persons.

#### **G. Decision and Order**

The Board hereby reverses the Order of the Brockton Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2, since the legal capacity of the subject building is currently under 100 persons. Accordingly, at this time the

building is not subject to the sprinkler requirements of M.G.L. c. 26G1/2 based upon the existing limited capacity of 96 persons, which shall include the total number of persons in the building, including employees, staff and entertainers. This determination is contingent upon the capacity of this building remaining at less than 100 persons.

At the hearing the Appellant was informed of the provisions of the 3<sup>rd</sup> paragraph of M.G.L. c.148, s.26G1/2. This provision of the law, in addition to the imposition of substantial penalties, mandates the immediate installation of a system of automatic sprinklers in nightclubs, dance halls, discotheques bars or similar entertainment occupancies with capacities of under 100 persons if certain violations occur with respect to a building's maximum capacity.

**H) Vote of the Board**

Maurice Pilette, (Chairperson)	In Favor
Edward G. McCann	In Favor
Thomas Coulombe	In Favor
Brian Gore	In Favor
Brian Donga	In Favor

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED ,



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Maurice Pilette, P.E.. Chairman  
Chairperson

Dated: June 13, 2005

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1<sup>st</sup> CLASS MAIL, POSTAGE PRE-PAID, TO:** Lt Edward R. Williams, Brockton Fire Department, 560 West Street, Brockton, MA. 02301 **and** Mr. Peter Asack, Manager, Max's Hideout, Inc., 68 Field Street, Brockton, MA. 02301